

arylcyaloalkl is substituted by an O, halo, NH₂, primary, secondary or tertiary amine, SH, SO, SO₂, SO₃, cycloalkyl, heterocycloalkyl or heteroaryl.

259. (New) The diagnostic or therapeutic kit of claim 164, further comprising an agent, wherein said agent is a therapeutic agent, diagnostic agent, anti-oxidant, filler, volatile oil, dispersant, flavoring agent, propellant, preservative, solvent, surfactant, buffering agent, RNA inactivating agent, agent that is internalized or up-taken by a cell, or coloring agent. --

REMARKS

Amendments

In the Amendment filed June 12, 2002, Applicant requested amendment of Claims 108, 115-117, 119, 124, 130-131, 135, 144, 146, 148, 152, 158-159, 162, 164-167, 170-171, 173, 179, 181, 183-187, 189, 191, 195, 200, 205, 207, 210, 219-227, 229, 232, to 234, and the addition of new Claims 235-254. Addition to the amendments requested in the Amendment filed June 12, 2002, Applicant now request the cancellation of Claim 168 and the further amendment of Claims 108-111, 113-127, 130-131, 135-137, 143-144, 146, 148, 151-153, 158-159, 161-162, 166, 169-171, 178-180, 184-187, 189, 193, 198, 201-203, 205-212, 214-216, 218-229, and 231-231; these amendments do not change the subject matter claimed and are made solely to clarify the subject matter claimed and to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants also request Examiner enter a further set of new claims: new Claims 255-259.

Claim 108 is amended to recite "aerosolizable or sprayable". Support for this amendment is found, for example, in page 46, lines 18-21 and page 51, lines 3-5.

Claims 109-111 and 201-203 are amended to recite "comprises". Support for this amendment is found, for example, in page 40, lines 23-26.

Claims 118 and 209 are amended to recite "purines are substituted at a . . . 6 . . . position". Support for this amendment is found in page 41, lines 23-24, which teaches that "[t]he pyrimidines and purines may be substituted at all positions as is known in the art" (emphaiss added), and page 42, line 1, which depicts a generic pyrimidine and purine compound with position 6 labeled.

Claims 119 and 210 are amended to correctly spell the term "xanthine". The term was incorrectly spelled "xantne". These amendments are to correct obvious typographical errors.

Claim 124 is amended to delete the term "about" regarding the number of mononucleotides. Support is found, for example, in the claim as originally filed.

Claim 130 is amended to recite "comprises surfactant proteins, non-liposomal phospholipids, fatty acids, and surfactant-associated proteins, or mixtures thereof". Support for this amendment is found, for example, in page 44, line 17 to page 45, line 7.

Claim 131 is amended to replace "is selected from" with "comprises" in order to comply with the proper use of the Markush format. Support is found, for example, in the claim as originally filed.

Claim 131 is amended to recite " $C_{22}H_{19}ClO_3$ (Atovaquone®)". This amendment is to clarify that " $C_{22}H_{19}ClO_3$ " is the correct chemical formula for Atovaquone®.

Claim 135 is amended to delete the term "gaseous". Support is found, for example, in the claim as originally filed.

Claim 144 is amended to recite "propellant". Support for this amendment is found, for example, in page 51, line 5.

Claim 152 are amended to recite the terms "sprayable" and "aerosolizable". Support for this amendment is found, for example, in page 46, lines 18-21 and page 51, lines 3-5.

Claim 164 is amended to recite "[a] diagnostic or therapeutic kit for delivery of an oligonucleotide(s) (oligo(s))". Support for this amendment is found, for example, in Claim 57 as originally filed.

Claims 164, 166, 167, 170, 173, and 222 are amended to recite "non-liposomal". The present claimed agents is hydrophilic and support is found, for example, in page 45, line 17, which teaches "sterile pyrogen-free saline solution" as a "suitable pharmaceutical acceptable carrier". Further, support for this amendment is found, for example, in page 46, lines 21-22, which teaches that "[t]he formulation of the invention may also comprise . . . a liposome". This teaching means that formulation of the invention is otherwise "non-liposomal".

Claims 164 and 222 are amended to recite "about 0.5 μ to 500 μ ". Support for this amendment is found, for example, in page 48, lines 24-27.

Claims 165-167, 171, 173, 183, and 223-225 are amended to recite "10 μ to 500 μ ". Support for this amendment is found, for example, in page 48, line 27.

Claim 165 is amended to recite "inhalable, respirable, intracavitary, intraorgan or intrapulmonary". Support for this amendment is found, for example, in Claim 37 as originally filed.

Claim 179 is amended to recite "anti-sense to the initiation codon, the coding region or the 5' or 3' intron-exon junction of a gene encoding a protein associated with hyper-responsiveness to adenosine, increased levels of adenosine, increased levels of an adenosine receptor, bronchoconstriction, asthma, lung allergy or lung inflammation, or is anti-sense to the corresponding mRNA". Support for this amendment is found, for example, in page 44, lines 2-9.

Claims 181 and 183 are amended to depend from Claim 173. Support for this amendment is found in Claim 181 (which originally depended from Claim 178, which in turn depended from Claim 173) and Claim 183 (which originally depended from Claim 181, which in turn depended from Claim 173).

Claim 184 is amended to recite "further comprising administering a surfactant, which may be in the same composition as the nucleic acid". Support for this amendment is found, for example, in page 4, lines 6-8.

Claim 185 is amended to depend from Claim 179. Support for this amendment is found in original Claim 185 (which originally depended from Claim 173, from which Claim 179 depends).

Claims 185-187, and 221 are amended to recite "increased levels of adenosine (A) receptors, and/or". Support for this amendment is found, for example, in page 10, lines 17-20.

Claim 186 is amended to recite "allergies". Support for this amendment is found, for example, in page 4, line 16.

Claim 191 is amended to recite "a surfactant protein, non-liposomal phospholipid, fatty acid, or surfactant-associated protein". Support for this amendment is found, for example, in page 44, line 17 to page 45, line 7. Applicants clarify that in the Response filed June 12, 2002, in the clean version of the amended claims, Claim 191 was inadvertently labeled Claim 190. In this Response, Applicant amends Claim 191 in order to further clarify the subject matter claimed.

Claim 195 is amended to insert an "an" in order to correct an obvious typographic error.

Claims 200, 206, and 219 are amended in order that these claims depend from Claim 179 instead of Claim 173.

Claim 207 is amended to insert an "or" in order to correct an obvious typographic error.

Claim 212 is amended to recite "wherein said oligonucleotide comprises a methylated cytosine". Support for this amendment is found, for example, in Claim 101 as originally filed.

Claim 220 is amended to recite "comprise" instead of "is selected from" in order that this claims be in a proper Markush format.

Claim 222 is amended to recite "their mixtures, or their pharmaceutically or veterinarily acceptable salts". Support for this amendment is found, for example, in page 4, line 12, page 44, line 15, and Examples 3 (page 54) and 5 (page 58), which show its veterinary use.

Claims 225-227 are amended to recite "device" instead of "inhaler". Support for this amendment is found, for example, in page 50, line 22.

Further, regarding the amendments requested in this Response, Claims 108-111, 113-127, 130-131, 135-137, 143-144, 146, 148, 151-153, 158-159, 161-162, 166, 169-171, 178-180, 184-187, 189, 193, 198, 201-203, 205-212, 214-216, 218-229, and 231-231 were amended to delete the terms "and/or", "may" and/or "if", to correct typographic errors, to make claims grammatical, and/or to place claims in a proper Markush format.

Support for new Claims 235 and 249 are found, for example, in page 40, lines 23-25.

Support for new Claims 236, 237, and 248 are found, for example, in page 44, line 12 to page 45, line 7.

Support for new Claims 238-246 are found, for example, in page 46, line 22, page 48, lines 24-27, page 50, lines 2-22, and Claim 79 as originally filed.

Support for new Claims 247 and 250-252 are found, for example, in page 4, lines 15-17, page 9, lines 8-14, page 40, lines 23-25, and page 44, lines 2-9.

Support for new Claim 253 is found, for example, in page 4, line 7.

Support for new Claim 254 is found, for example, in page 5, lines 6-7.

Support for new Claim 255 is found, for example, in page 4, line 7.

Support for new Claim 256 is found, for example, in page 12, line 19, and in page 43, lines 25-26 which teaches that the "antisense nucleotides may be administered in the form of their pharmaceutically acceptable salts or as a mixture" wherein no surfactant is taught to be

included in this formulation.

Support for new Claim 257 is found in original Claim 10 as filed.

Support for new Claim 258 is found in original Claim 10 as filed.

Support for new Claim 259 is found in original Claim 29 as filed.

Applicant's have enclosed a complete set of the claims and amended claims in the condition desired after taking into account the above amendments. Also enclosed is a complete set of claim and amended claims showing the changes made by the above amendments.

Applicant reserves the right to reintroduce the original claims in one or more continuation type of application. Applicant respectfully contends that the amendments will place the case in condition for allowance. No new matter is added in any of the above amendments and the Examiner is respectfully requested to enter the amendments and reconsider the application.

Remarks

Claims 108-132, 134-141, 143-144, 146, 148, 151-153, 158-159, 161-163, 164-167, 169-173, 178-181, 184-189, 191-193, 195-198, and 200-234 are pending in the present application. In addition, Applicant requests Examiner enter new Claims 235-259. Claim 168 is cancelled.

1. 35 U.S.C. 112, second paragraph.

The Examiner's rejection of Claim 191 under 35 U.S.C. §112, second paragraph should be withdrawn, because Claim 191 as amended recites a Markush group with proper use of the Markush format.

The Examiner rejects Claim 191 under 35 U.S.C. 112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner alleges that Claim 191 appears to claim a Markush group without proper use of the Markush format. Claim 191 as amended recites "a surfactant protein, non-liposomal phospholipid, fatty acid or surfactant-associated protein". Claim 191 as amended recites a Markush group with proper use of the Markush format.

Since amended Claim 191 is clear and definite, this rejection should be withdrawn.

2. 35 U.S.C. 112, first paragraph.

The Examiner's rejection of Claim 222 under 35 U.S.C. §112, first paragraph for lack of written description should be withdrawn, because Claim 222 as amended recites "about 0.5 to 500 μ ".

The Examiner rejects Claim 222 under 35 U.S.C. 112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner alleges that "neither the specification as filed, nor the original claims provide support for the limitations wherein the ' . . . particle size about 0.5 μ to about 500 μ ". The Applicant traverse this rejection in that the specification teaches that: "In general, respirable particles range from **about .5 to 10 microns** in size. . . . For nasal administration, a particle size in the range of **10-500 μ m** is preferred to ensure retention in the nasal cavity." (page 48, line 23 to page 49, line 1; emphasis added). These two ranges of particle size teach a continuous range of particle size from "about 0.5 μ " to "500 μ ", since the two ranges taught overlap at 10 μ . The unit of measure " μ " is equal to "micron" and " μ m" (micrometer), and the length of 1 micrometer is equal to 10^{-6} m.

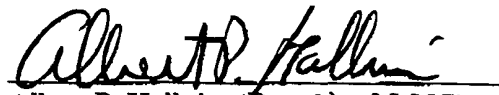
Since the subject matter of Claim 222 is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, therefore this rejection of Claim 222 should be withdrawn.

CONCLUSION

In view of the foregoing amendment and remarks, the Applicant believes that the application is in good and proper condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at (650) 463-8109.

Respectfully submitted,

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